

### REMARKS

Claims 1-49 are pending in the application. In the non-final Office Action dated August 22, 2006, the Examiner made the following disposition:

- A.) Rejected claims 1, 2, 8, 10, 11, 17, 18, 24, 26, 27, 33, 34, 40, 42, 43, and 49 under 35 U.S.C. 102(e) as allegedly being anticipated by *Tryon, III, et al. (U.S. 7,006,947)* (“*Tryon*”).
- B.) Rejected claims 3, 5-7, 9, 12-16, 19, 21-23, 25, 28-32, 35, 37-39, 41, and 44-48 under 35 U.S.C. 103(a) as allegedly being unpatentable over *Tryon* in view of *Ali, et al. (U.S. 7,036,049)* (“*Ali*”).
- C.) Rejected claims 17-32 under 35 U.S.C. §101.
- D.) Provisionally rejected claims 1, 2, 17, 18, 33, and 34 under the ground of non-statutory obviousness-type double patenting.
- E.) Objected to claims 4, 20, and 36.

Applicant respectfully traverses the rejections and addresses the Examiner’s disposition below. Claims 1, 17, 33, and 49 have been amended. Claims 9, 25, and 41 have been canceled.

- A.) Rejection of claims 1, 2, 8, 10, 11, 17, 18, 24, 26, 27, 33, 34, 40, 42, 43, and 49 under 35 U.S.C. 102(e) as allegedly being anticipated by *Tryon, III, et al. (U.S. 7,006,947)* (“*Tryon*”):  
Applicant respectfully disagrees with the rejection.

Claims 1, 17, 33, and 49, each as amended, each claim subject matter relating to asynchronously receiving information about a computer-based system by subscribing to the information. A risk at which the computer-based system operates is calculated based on the received information.

This is clearly unlike *Tryon* in view of *Ali*, which fails to disclose or suggest asynchronously receiving information about a computer-based system by subscribing to the information, and calculating a risk based on the received information. As acknowledged by the Examiner, *Tryon* fails to teach asynchronously receiving information by subscribing to the information. *Office Action of 8/22/06*, page 7.

The Examiner argues that *Ali* teaches asynchronously receiving information by subscribing to the information. Applicant disagrees. *Ali* clearly teaches synchronously receiving information, and fails to discuss publish/subscribe functionality. *Ali* 5:25-30 describes:

Statistics are sent from nodes 108 to statistics collection unit 118 in

response to scheduled polling and event driven collection. In scheduled polling, the statistics collection unit 118 periodically sends requests to nodes 108 to respond with requested data. The requests may be sent at regular or irregular intervals.

Thus, *Ali* teaches synchronous communication: 1) the requestor sends a request for information to a known recipient, and 2) the recipient responds to the known requestor with the requested data. Further, as both recipient and requestor are known to each during communication and the communication is synchronous, *Ali* fails to relate to publish/subscribe communication.

Therefore, *Tryon* in view of *Ali* still fails to disclose or suggest asynchronously receiving information about a computer-based system by subscribing to the information. Thus, *Tryon* in view of *Ali* fails to disclose or suggest claims 1, 17, 33, and 49.

Claims 2, 8, 10, 11, 18, 24, 26, 27, 34, 40, 42, and 43 depend directly or indirectly from claims 1, 17, or 33 and are therefore allowable for at least the same reasons that claims 1, 17, and 33 are allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

B.) Rejection of claims 3, 5-7, 9, 12-16, 19, 21-23, 25, 28-32, 35, 37-39, 41, and 44-48 under 35 U.S.C. 103(a) as allegedly being unpatentable over *Tryon* in view of *Ali*, et al. (U.S. 7,036,049) (“*Ali*”):

Applicant respectfully disagrees with the rejection.

Independent claims 1, 17, and 33 are allowable over *Tryon* in view of *Ali* as discussed above.

Claims 3, 5-7, 12-16, 19, 21-23, 28-32, 35, 37-39, and 44-48 depend directly or indirectly from claims 1, 17, or 33 and are therefore allowable for at least the same reasons that claims 1, 17, and 33 are allowable.

Claims 9, 25, and 41 have been canceled.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

C.) Rejection of claims 17-32 under 35 U.S.C. §101:

Claims 17-32 have been amended as per the Examiner's request to overcome the rejection.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

D.) Provisional rejection of claims 1, 2, 17, 18, 33, and 34 under the ground of non-statutory obviousness-type double patenting:

Applicant respectfully disagrees with the rejection.

The Examiner argues that claims 1, 2, 17, 18, 33, and 34 are anticipated by various claims of U.S. patent application no. 10/690,952. Applicant notes that the Examiner likely made a typographical error, because the present application is U.S. patent application no. 10/690,952.

The Examiner also argues that claims 1, 2, 17, 18, 33, and 34 are provisionally rejected as obvious based on claims 1, 11, and 22 of co-pending U.S. patent application no. 10/690,951. Applicant respectfully disagrees with the rejection. Further, as both cases are currently pending and U.S. patent application no. 10/690,951 has not been patented, Applicant submits it is premature to file a terminal disclaimer at this time.

E.) Objection to claims 4, 20, and 36:

Applicant respectfully acknowledges the Examiner's finding of allowable subject matter in claims 4, 20, and 36.

Claims 1, 17, and 33 are allowable as discussed above. Claims 4, 20, and 36 depend directly or indirectly from claims 1, 17, or 33 and are therefore allowable for at least the same reasons that claims 1, 17, and 33 are allowable.

Applicant respectfully submits the objection has been overcome and requests that it be withdrawn.

### CONCLUSION

In view of the foregoing, it is submitted that claims 1-8, 10-24, 26-40, and 42-49 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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